IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.08.2005

CORAM:

THE HON'BLE MR.JUSTICE P.SATHASIVAM

and

THE HON'BLE MR.JUSTICE AR.RAMALINGAM

W.P.No.11299 of 2000

Rajan Kutty .. Petitioner

vs.

1. The Registrar
   High Court, Chennai.

2. The Chief Judicial Magistrate
   Coimbatore. .. Respondents

Petitions filed under Article 226 of the Constitution of India praying for an issuance of a writ of certiorarified mandamus call for the records relating to the proceedings in Roc.5784/95-C.1 dated 30.5.97 passed by the first respondent herein and quash the same and direct the respondent to allow the petitioner to retire from service without any compulsion with all benefits.

For petitioner : Mr. K. Vasudevan

For respondents : Mr. Suresh Viswanathan
Government Advocate

..

ORDER

(ORDER of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the proceedings of the Registrar, High Court, first respondent herein dated 30.05.1997, imposing penalty of compulsory retirement, the petitioner has filed the above writ petition.

2. According to the petitioner, he was appointed as Junior Assistant in the year 1952 through Tamil Nadu Public Service Commission. Later, he was promoted to various categories and finally promoted and posted as Sherishtadar in the Chief Judicial Magistrate Court, Coimbatore.

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When he was working as Sherishtadar at Chief Judicial Magistrate Court, Coimbatore, he was placed under suspension on 23.05.1995 by the second respondent, on the ground that he obtained signature from the In-charge Chief Judicial Magistrate for transfer orders of the personnel's of the Judicial Department and issued a memo dated 24.05.1995, calling for explanation. Meanwhile, the first respondent issued a charge memo dated 18.06.1995, calling for explanation. The petitioner submitted his explanation on 23.06.1995. According to him due to coercion and assurance of the second respondent he was compelled to sign such statement, explanations etc., admitting the charges levelled against him. Subsequently, the second respondent appointed an Enquiry Officer and directed him to appear before the said Officer. The Enquiry Officer conducted enquiry and finally gave a finding that all the charges are proved. The second respondent forwarded the Enquiry Officer's report and all the relevant papers to the first respondent. The first respondent, who is also an appellate authority, took the role of the disciplinary authority and passed the impugned order of compulsory retirement. The said order is under challenge in this writ petition.

3. Heard Mr. K. Vasudevan, learned counsel for the petitioner and Mr. Suresh Viswanathan, learned Government Advocate for the respondents.

4. The learned counsel appearing for the petitioner mainly contended that the first respondent being an appellate authority ought not to have passed the impugned order and imposed the punishment of compulsory retirement. According to him, on this score, the punishment is liable to be quashed. On the other hand, learned Government Advocate, by drawing our attention to the relevant Rules would submit that the first respondent is equally competent to pass orders and impose appropriate punishment, hence, there is no merit in the writ petition and prayed for dismissal of the same.

5. In this regard it is relevant to refer Rule 3 of Tamil Nadu Judicial Ministerial Service Rules, which reads as under :

> "3. PAY, ALLOWANCES, LEAVE, LEVE SALARY, PENSION AND OTHER CONDITIONS OF SERVICE:-
>
> The Tamil Nadu Civil Services (Classification, Control and Appeal) rules, the Rules regulating the pay of the services, the Government Servant's Conduct Rules, the Fundamental Rules, the Tamil Nadu Leave Rules, 1933, and the Pension Rules, for the time being in force shall, in so far as they may be applicable and except to the extent expressly provided in these rules, govern members of this service in the matter of

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their pay, allowance, leave, leave salary, pension and other conditions of service.

Provided that-

(i) Omitted P.Dis.80/91

(ii)save as otherwise expressly provided in these rules nothing contained in this rule shall affect the operation of the provisions of (** rule 16 of the the Tamil Nadu Pension Rules, 1978) relating to the fixation of (**) Substituted P.Dis.80/91 pay of a member of service who is in receipt of a military pension. "

It is clear that Tamil Nadu Civil Services (Discipline and Appeal) Rules are applicable to the persons in the judicial service. Rule 14 of the said Rules speaks about authorities competent to suspend and impose penalties on the members of the subordinate service. Rule 14 (2) reads as under.

"14.(2) The authority which may impose the penalties of-

(i) withholding of promotion, including stoppage at an efficiency bar;

(ii) reduction to a lower rank in the seniority list or to a lower post or time-scale, whether in the same service or in another service, or to a lower stage in a time-scale;

(iii) Compulsory retirement otherwise than under Article 465 (2) or under note 1 to article 465-A of the Civil Service Regulations;

(iv) removal from the civil service of the State Government; and

(v) dismissal from the civil service of the State Government, on a member of a Subordinate Service including those in the National Cadet Corps units, shall be the appointing authority or any higher authority. "

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The above provision makes it clear that the penalties referred to in Sub-clause (2) of Rule 14 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, can be imposed either by the appointing authority or higher authority. In our case, it is not in dispute that though the impugned order of compulsory retirement was passed by the first respondent, who is none else than the higher/appellate authority. When the Rules enable that

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enumerated penalties can be passed either by the appointing authority or by higher authority, the first respondent being a higher authority, we are of the view that the said order cannot be faulted with. Accordingly, we reject the contention raised by the learned counsel for the petitioner. Though the learned counsel for the petitioner relied on certain decisions, in the light of the specific Rule enumerated above, we are of the view that it is unnecessary to refer the same. Except the above contention, no other point has been urged.

In the light of what is stated above, we do not find any error or infirmity in the order impugned. Consequently, the writ petition fails and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Registrar
   High Court, Chennai.

2. The Chief Judicial Magistrate
   Coimbatore.

+ 1 CC to Mr. K. Vasudevan, Advocate SR NO 33823

W.P.No.11299 of 2000
Dated:11.08.2005

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